**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CRIMINAL APPLICATION No. 1669 of 2007**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE M.R. SHAH**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**NAYANABEN BHIKHUBHAI NAYAK - Applicant(s)**
**Versus**
**STATE OF GUJARAT & 6 - Respondent(s)**

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**Appearance :**
MR ZUBIN F BHARDA for Applicant(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 1,
None for Respondent(s) : 2 - 7.

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**CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**

**Date : 05/09/2007**

**ORAL JUDGMENT**

By way of this petition under Articles 226 and 227 of the Constitution of India, the petitioner, - original complainant has prayed for an appropriate order to quash and set aside the order

dated 9-7-07 passed by the learned Sessions Judge, Navsari passed in Criminal Revision Application No.49/06 in dismissing the same and confirming the order passed by the ld. JMFC, Gandevi passed below Exh-30 in criminal complaint No.859/04 by which the request of the petitioner for issuing process against the accused Nos.7 and 8 has been rejected. It is also further prayed for an appropriate order directing the ld. JMFC, Gandevi to issue process against the accused Nos.7 and 8 in criminal complaint No.859/04 and to try them for the offence punishable u/s 499, 500, 501, 502, 34 and 114 of the IPC.

2. The petitioner is the original complainant who has filed one private complaint u/s 190 of the Criminal Procedure Code in the Court of ld. JMFC, Gandevi which was numbered as Criminal Misc. Application No.8/04 and the said complaint was against the eight accused persons for the offence u/s 499, 500, 501, 502, 34 and 114 of the IPC. That as per the said complaint, accused Nos.1 to 6 had organized a press conference on 7-12-03 and that accused No.7 being the reporter of daily newspaper viz. “Sandesh” had remained present in the aforesaid press conference which was organized by the original accused Nos.1 to 6 allegedly claiming to be the trustees of one Friends New English School. It was the case of the petitioner in the complaint that reckless statements were made by the accused Nos.1 to 6 in the said press conference and the same were printed and published by the accused No.8 in the capacity of the Editor

of the abovementioned newspaper. It was alleged in the complaint that neither the accused No.7 tried to inquire into the genuineness of the statements and reckless allegations made by the accused Nos.1 to 6 in the press conference and without inquiring into the genuineness of the same, the accused Nos.8 published the baseless and reckless statements in the newspaper, as a result of which the petitioner was defamed and had to bear a lot of humiliation and embarrassment in the society. That the ld. JMFC, Gandevi initially ordered inquiry u/s 202 of the Criminal Procedure Code and after completion of said inquiry, the ld. JMFC issued process against the accused Nos.1 to 6 only and the ld. JMFC did not issue process against the accused Nos.7 and 8 i.e. reporter and Editor of the aforesaid newspaper “Sandesh”. That thereafter, the ld. JMFC ordered registration of the case against accusede Nos.1 to 6 which came to be registered as 859/04. That thereafter, the case was put to trial and the petitioner came to be examined at Exh-25. It appears that during the course of the examination-in-chief, the newspaper cutting in which the alleged defamatory article was published was given a tentative Exh-40. The petitioner also during the course of her examination-in-chief was produced on record a letter addressed by accused No.7 dtd 9-1-04 to the learned advocate appearing on behalf of the petitioner relying to the notice issued by the petitioner, wherein also it has been mentioned that the statement issued by the accused Nos.1 to 6 in the press conference was published but it is

not borne out as to whether the genuineness or correctness of the statement was verified or not. Therefore, the petitioner submitted an application Exh-70 praying for issuance of process against the accused Nos.7 and 8 also u/s 319 of Criminal Procedure Code, relying upon the aforesaid letter dated 9-1-04 by contending inter alia that the Hon'ble Court had the power to process against persons who appear to be guilt of the offence during the course of inquiry or trial at the time of recording of evidence. That the ld. JMFC, Gandevi by order dated 31-8-06 rejected the application Exh-70. Being aggrieved by the order passed by the ld. JMFC, Gandevi dtd 31-8-06, the petitioner preferred Criminal Revision Application No.49/06 in the Court of learned Sessions Judge, Navsari and the learned Sessions Judge vide its judgment and order dated 9-7-07 dismissed the aforesaid Criminal Revision Application and confirmed the order passed by the ld. JMFC, Gandevi dated 31-8-06. Being aggrieved by the same, the petitioner, - original complainant has preferred the present petition under Articles 226 and 227 of the Constitution of India.

3. Shri Bharda, learned advocate appearing on behalf of the petitioner has vehemently submitted that both the courts below have materially erred in refusing to issue process against the accused Nos.7 and 8 i.e. reporter and Editor of the daily newspaper “Sandesh”. It is submitted that it was the duty of the reporter and editor first to inquire into genuineness of the statements and the

allegations made by the accused Nos.1 to 6 made in the press conference before publishing in the newspaper. It is submitted that in the present case without entering into the genuineness of the same, the accused No.8, editor on the basis of the report submitted by the reporter accused No.7 who has attended the press conference published baseless and reckless statements in the newspaper and as a result of which the petitioner is defamed and had to bear a lot of humiliation and embarrassment in the society and considering the same, both the Courts below ought to have issued process against the accused Nos.7 and 8 also for the offence u/s 499, 500, 501, 502, 34 and 114 of the IPC. It is submitted that during the course of the examination-in-chief of the petitioner and on the basis of the letter addressed by the accused No.7 dated 9-1-04 to the learned advocate appearing on behalf of the petitioner relying to the notice issued by the petitioner, a case has been made out against the accused Nos.7 and 8 and under the circumstances, the ld. JMFC ought to have exercised powers u/s 319 of Criminal Procedure Code and ought to have issued process against the accused Nos.7 and 8 also. It is further submitted by him that without ascertaining the veracity of the statements made by the accused Nos.1 to 6 in the press conference, the accused Nos.7 and 8 colluded with the accused Nos.1 to 6 and went ahead to print and publish and thereby complete the alleged offence of defamation. It is submitted that the Courts below have materially erred in holding that no new material and/or new

evidence has been adduced by the petitioner during the course of examination-in-chief, so as to issue process against accused Nos.7 and 8. Under the circumstances, it is requested to allow the present petition by quashing and setting aside the orders passed by both the Courts below and to issue process against accused Nos.7 and 8 also.

4. On the other hand, Shri KT Dave, ld. APP while opposing the present petition has submitted that initially when the process was issued only against accused Nos.1 to 6 and the ld. JMFC after holding the inquiry u/s 202 of Criminal Procedure Code and Court did not issue process against accused Nos.7 and 8, the petitioner did not challenge the same and thereafter, the present application came to be filed only on the basis of the examination-in-chief and considering the same, when the learned trial Court has held that there are no changed circumstances and/or no new material has come on record to issue process against the accused Nos.7 and 8 and thereby has rejected the application below Exh-70, it cannot be said that there is any illegality committed by the ld. JMFC, Gandevi. It is also further submitted that even considering the case of the petitioner as it is, merely because before publishing the statements of the accused Nos.1 to 6 made in the press conference, the same was not verified that by itself will not make out a case for the offence u/s 499, 500, 501 and 502 of the IPC. It is submitted that even considering the averments and allegations and even considering the case of the petitioner, no case is

made out against the accused Nos.7 and 8 and nothing is on record that the said statement has been published intentionally knowing to be false with a view to defame the petitioner and under the circumstances, the ld. JMFC has rightly not issued the process against the accused Nos.7 and 8 and the same is rightly confirmed by the learned Sessions Court. Therefore, it is requested to dismiss the present petition, as no jurisdictional error has been committed by both the Courts below.

5. Heard the learned advocates appearing on behalf of the parties.

6. The accused Nos.7 and 8 i.e. reporter and editor of the newspaper “Sandesh” are alleged to have committed the offence u/s 499, 500, 501, 502, 34 and 114 of the IPC alleging inter alia that the press conference was organized by original accused Nos.1 to 6 and in which the original accused No.7, reporter of daily newsapaper “Sandesh” was present and the statements made by the accused Nos.1 to 6 made in the press conference were printed and published by the accused Nos.7 and 8 in the aforesaid daily newspaper without inquiring into the genuineness of the statements and the allegations made by the accused Nos.1 to 6 in the press conference. It is alleged that because of that, the petitioner was defamed and had to bear a lot of humiliation and embarrassment in the society. At the outset, it is required to be noted that initially the ld. JMFC, Gandevi passed an order for inquiry u/s 202 of Criminal Procedure

Code and after inquiring u/s 202, the ld. JMFC issued process only against accused Nos.1 to 6 and did not issue process against accused Nos.7 and 8 and the petitioner did not challenge the same. Now it is the case of the petitioner that after examination-in-chief of the petitioner and on production of one letter addressed by the accused No.7 dated 9-1-04 to the learned advocate appearing on behalf of the petitioner relying to the notice issued by the petitioner a case is made out against issuance of process and against accused Nos.7 and 8 during the course of the trial and therefore, it is requested to exercise powers u/s 319 of Criminal Procedure Code and to issue process against accused Nos.7 and 8 also. Thus, considering the above and the case on behalf of the petitioner, the sum and substance of the allegations against the accused Nos.7 and 8 is that accused Nos.7 and 8 published the statements made by the accused Nos.1 to 6 in the press conference without verifying the same and/or without considering the genuineness of the same and therefore, it is alleged that the accused Nos.7 and 8 have committed the offence as alleged. Now for attracting the offence u/s 499 of the IPC, what is required is a person must have published any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person to defame that person. Therefore, what is important is the knowledge of the person who publishes such imputation intending to harm or having reason to believe that such imputation will

harm the reputation of such person. Considering the averments and allegations against accused Nos.7 and 8, nothing is borne out and even it is not the case of the petitioner that accused Nos.7 and 8 have published the imputation concerning the petitioner intending to harm, or knowing or having reason to believe that such imputation will harm the reputation of petitioner. Thus, the ingredients of section 499 are not satisfied. Similar is the case for the offence u/s 501 and 502 of the IPC. There is no allegation that accused Nos.7 and 8 have printed the matter knowing or having good reason to believe that such matter is defamatory of any person. The statements which were made in the present conference by accused Nos.1 to 6 came to be published by accused Nos.7 and 8 without verifying the genuineness of the same by itself without therebeing any further allegation of knowledge and belief as stated above will not constitute any offence u/s 499 and/or 501 of the IPC. Thus, considering the above, when both the Courts below have rejected the prayer of the petitioner to issue process against accused Nos.7 and 8 for the offence u/s 499, 500, 501, 502, 34 and 114 of the IPC, it cannot be said that there is any illegality committed by both the Courts below. On the contrary, considering the allegations against accused Nos.7 and 8, both the Courts below are justified in not issuing process against accused Nos.7 and 8 for the offence punishable u/s 499, 500, 501, 502, 34 and 114 of the IPC. It is required to be noted that in the reply to the notice, the accused Nos.7 and 8 have

categorically submitted that there was no intention to harm the reputation of the petitioner and/or to defame her and if feelings of the petitioner are hurt, then they have also apologized. Be that as it may, considering the allegation against accused Nos.7 and 8, it cannot be said that any case is made out against accused Nos.7 and 8 for the offence u/s 499, 500, 501, 502, 34 and 114 of the IPC.

7. For the reasons stated above, the petition fails and is dismissed accordingly.

(M.R. Shah, J.)

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